

Interdependence between Democracy and Human Rights

Expert Seminar on Democracy and the Rule of Law

Geneva, 28 February – 2 March 2005

CONCLUSIONS AND RECOMMENDATIONS

The experts agreed on the following conclusions:

1. Democracy and the rule of law are interdependent and both are necessary to create an environment in which human rights can be realized.
2. The holistic concept of democracy articulated during the first expert seminar on democracy by the late High Commissioner for Human Rights, Sergio Vieira de Mello, which encompassed the procedural and the substantive, formal institutions and informal processes, majorities and minorities, males and females, Governments and civil society, the political and the economic, the national and the international, remains valid and attainable.
3. Significant gains have been made on every continent in advancing democracy. Each society has its own appropriate democratic institutional traditions, which should function under universally accepted principles and norms.
4. The experts affirmed that the Commission on Human Rights should continue to play a crucial role in developing a common understanding of principles, norms, standards and values that are the basis of democracy and the essential elements of the concept of the rule of law, and in promoting the normative content of the human rights enumerated in various international instruments.
5. The subordination of women in society frequently makes it difficult for women to claim and access their human rights, including those provided in constitutions and legislation. Women are not only disadvantaged within society generally, but are also in the lowest rank within each disadvantaged group – the poorest of the poor. Special measures are necessary to enable women to be aware of their rights as well as mechanisms that will help women to claim and enjoy all human rights.

The Interaction between Human Rights, Democracy, and the Rule of Law

6. States bear ultimate responsibility as the guarantors of democracy, human rights, and rule of law. They are encouraged to avail themselves of all means of international and regional assistance and cooperation, with a view to strengthening capacity-building at the national level. International institutions should provide support through capacity-building, field services and monitoring.

7. The triangle formed by the concepts of rule of law, human rights and democracy is not an equilateral one; circumstances may often require that greater emphasis be placed on one element, without detaching it from the others. Thus, a State whose institutions have broken down may need to re-establish democratic institutions and the rule of law to ensure respect for human rights and fundamental freedoms. States in which an authoritarian rule or populist majority has denied the rights of many persons may give priority to restoring human rights and fundamental freedoms and their system of protection, including the administration of justice.
8. Free, fair, and periodic multiparty elections are a key component of democracy, the rule of law, and the protection of human rights. They also have an autonomous value as a means of self-realization and recognition of human dignity. Periodic elections are essential to ensure the accountability of representatives for the exercise of the legislative or executive powers vested in them. The conduct of elections should be entrusted to an independent mechanism, as appropriate, that is free from executive or other interference that could undermine the fairness of elections.
9. General comment No. 25 concerning article 25 of the ICCPR should guide the implementation of the right to participate in public affairs, voting rights, and the right of equal access to public service. According to this general comment, the conduct of public affairs is a broad concept, which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs should be established by the constitution and other laws.
10. Freedom of expression, assembly and association are essential conditions for democracy and for a democratic election process. Positive measures should be taken to overcome specific difficulties, such as illiteracy, language barriers, poverty, or impediments to freedom of movement that prevent persons entitled to vote from exercising their right effectively. Information and materials about voting should be available in minority languages.
11. The right to stand for election and the right to vote are substantively linked. The effective implementation of the first ensures a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be based on objective and reasonable criteria established by law and not exclude any person on the basis of gender, religion, ethnicity, or any other discriminatory ground. Unreasonable or discriminatory requirements such as education, residence, descent or political affiliation should not be permitted.
12. International cooperation and the participation of civil society are essential in building a wide range of pluralistic institutions and supporting periodic elections and other democratic processes.

13. All organs and institutions of the State should operate in a transparent manner and be held accountable. Transparency is essential to ensure that there is respect for the rule of law. Thus, access to information about public affairs and the operation of government bodies must be guaranteed. States are encouraged to adopt and implement legislation ensuring broad access to information by the public.
14. Sovereignty, national security, and public order, interest and morals are terms that need to be interpreted in a manner consistent with international law because they confer discretionary power on State organs. It is important that no power remains unchecked and that there is a separation of powers between the different functions of the State.

Meeting Challenges to Democracy, Human Rights and the Rule of Law through ensuring Equality, Participation and Accountability

The fundamental principles of equality, participation and accountability derive from, underpin and protect human rights, democracy and the rule of law. Therefore:

Conflict, Disorder, Terrorism and Security Regimes

15. States must uphold their human rights obligations during periods of conflict and national emergency, in accordance with international law, the rule of law, and the principles of democracy. All measures taken to suspend temporarily those human rights that may be subject to derogation must be proportional, non-discriminatory, respectful of international obligations, and strictly required by the exigencies of the situation. In no circumstances may a State suspend or deny non-derogable rights such as the right to be free from torture and slavery, the right to equality under the law, and the basic guarantees of a fair and impartial hearing before a competent tribunal. Constant civilian oversight over the military and security forces is essential.
16. The undermining of the rule of law is a fundamental constraint to the enjoyment of human rights and humanitarian law. International human rights law and international humanitarian law together reinforce the body of rules that regulate a societal order that is predictable, orderly and that respects human rights. The two bodies of law overlap as they seek to protect human dignity and reduce human suffering.
17. Some recent responses to terrorism have resulted in an erosion of human rights and violations of the rule of law domestically and internationally. There have been serious violations of international human rights and international humanitarian law, e.g. the illegal seizure and deportation of persons, torture, and violations of provisions of the Geneva Conventions of 12 August 1949. This poses a challenge to the advancement of human rights.
18. The rationale for and practice of pitting security and rights against each other is both dangerous and counterproductive. There is need for vigilance,

particularly as rule of law and democratic institutions are more – not less – important under states of exception.

19. In times of crisis and social disorder, threats to the effective enjoyment of rights can originate in derogating from rights, in the process of the administration of justice, and in the course of enforcing security laws. Recent developments, including conflict and terrorism, have tended to erode the rule of law.

Impunity

20. All States must act within the law and encourage accountability for abuses and wrongdoing. National action plans to combat impunity may be a suitable vehicle for implementing this principle. They should be based on a comprehensive approach, including mutually reinforcing measures, such as judicial accountability, mechanisms of truth and reconciliation, and programmes of reparation. Such plans should be developed in a participatory manner and the views of civil society should be taken into account.
21. Countering impunity requires effective measures at the international and national levels. The experts affirmed that States must be encouraged to ratify the Rome Statute of the International Criminal Court. They must also enhance their capacity to investigate and prosecute those responsible for war crimes, crimes against humanity and genocide. Furthermore, and to enhance accountability, States must be encouraged to go beyond the ratification of international instruments and to make every effort to implement them at the domestic level. The international community should develop its capacities to provide technical assistance in this regard.
22. Victims of international crimes need special care and their needs should be considered as priorities. Their rights and needs must be at the centre of policy considerations regarding accountability and justice. They need to participate in decisions that have an impact on their rights.
23. It is necessary not only to react to violations of human rights, but to establish effective mechanisms that can prevent them. There is a need to place emphasis on building an early warning capacity to address problems of impunity. In this context, the experts recommended that the High Commissioner for Human Rights, together with the Secretary-General, should be able to call upon the Security Council in cases where impunity is systematic. Also, mutual cooperation in criminal matters should be enhanced. Regional measures may be useful models in this matter.
24. In considering the need to combat impunity for violations of human rights and the detrimental impact of impunity on democracy and the rule of law, it is recommended that a study be carried out analysing the interrelationship between human rights obligations and the law of State responsibility, taking into account issues of universal jurisdiction and the practice of State and diplomatic immunities.

Corruption

25. All forms of corruption, including political, economic and corporate corruption, undermine democratic values and institutions, degrade the enjoyment of rights, and impair the ability of the State to implement human rights, in particular, economic and social rights. Resources to combat corruption should be made available readily and widely at the national and international levels.
26. The international community's fight against corruption should be broad and holistic in nature, taking full account of political corruption in a more serious way, with a view to consolidating new and restored democracies.
27. The enactment of appropriate legislation should be prioritized to address the various structural weaknesses that allow corruption to thrive. Also, international cooperation is essential to counter corruption. States must, for instance, provide for their banking system to ensure that the profits of corruption cannot be retained, but are returned to the State of origin. The ratification and implementation of relevant international, regional and sub-regional instruments, particularly the United Nations Convention against Corruption, and those related to money laundering, should be promoted. Bilateral agreements aimed at countering corruption should also be encouraged.
28. Anti-corruption strategies should be nationally led and based on the principles of transparency and accountability. The right of access to information, including government information, and freedom of expression and the press should be respected and enhanced. Measures aimed at reducing poverty should take into account the linkages between high poverty levels, illiteracy and the potential for corruption. Working towards the realization of the Millennium Development Goals provides an important opportunity to confront underdevelopment and corruption.
29. Countering corrupt practices in electoral processes requires cooperation among the key institutions that supervise elections, such as the electoral agencies, the police and anti-corruption institutions.
30. Codes of conduct for public officials and representatives and the public services, and the periodic declaration of assets should be introduced. Electoral legislation should address matters of funding of political parties, including electoral campaign financing and the role of corporations. Anti-corruption legislation should address the national and international giving and receiving of bribes.

Denial of Access to Justice by Disadvantaged Groups

31. Access to justice is an essential condition for the effective implementation of human rights, as well as for democracy and the rule of law. It does not mean exclusively access to the judicial sector. It also means access to less formal types of institutions and mechanisms such as national human rights institutions,

ombudspersons, mediators and skilled personnel who can assist people in claiming their rights and navigating through State agencies.

32. Deprivation of access to justice usually means denial of human rights, political exclusion and legal uncertainty. Moreover, it often leads to a lack of knowledge about rights or cynicism relating to their importance. Disadvantaged or vulnerable groups, including minorities, are most frequently among those who suffer denial of justice. States should adopt policies and make resources available so that the population, and in particular disadvantaged groups, can become aware of their rights.
33. Obstacles to access to justice are manifold, but include poverty, lack of education and illiteracy - afflicting 780 million inhabitants of the world - and discrimination. Commonly, the face of a person who does not have access to justice is that of a rural woman, and in many cases a member of a minority group. States must make a real effort to meet the Millennium Development Goals so that those who are disadvantaged may benefit.
34. Many members of disadvantaged groups are deprived of access to justice because the costs of engaging with judicial institutions outweigh their resources. Other problems, ranging from the slowness of the judicial process, and judicial corruption to lack of information about relevant procedures, lead to disputes being resolved through informal means or through extralegal or even illegal action.
35. Legal aid for the poor is a useful and even indispensable method of levelling the playing fields for the poor vis-à-vis other sections of society. There is no single model for such assistance, and States should consider a variety of approaches to find what is most effective for them. A focus on affordability and quality of the services rendered is essential. Legal assistance services should not be incorporated in the formal judicial apparatus but be independent from judicial control. Legal aid should be understood to be a broad concept not limited to formal legal proceedings, but should also include advisory services to assist persons to obtain the benefits and services.
36. Education, in particular the eradication of illiteracy and human rights education in general, is essential in raising the awareness of disadvantaged groups of their rights. In some cases, States have ratified human rights instruments and have adopted implementing legislation, but need to go further by adopting policies and making resources available so that the population, and in particular disadvantaged groups, can have assistance with how to exercise these rights.
37. Progressive rapprochement between customary dispute resolution mechanisms and the formal legal system could improve the administration of justice. Care should be taken to monitor customary dispute resolution mechanisms to ensure respect for human rights that have been universally agreed upon at the international level. A process of consultation, dialogue and coordination

between the formal and non-formal legal systems can improve access to justice.

38. States should consider the creation of effective procedures to deal with crimes committed on a large scale and mass torts. Ending impunity for State and non-State actors, including corporations, is essential.
39. An overarching body of principles that highlight the minimum core elements of the right of access to justice for the disadvantaged should be developed. They should form the accepted basis for legal and institutional reform across a diversity of legal systems.
40. The experts recommended that States should review the activities of the poor that have been characterized as offences to be dealt with in the context of the criminal justice system, with a view to considering decriminalizing behaviour that essentially is non-harmful and tends to penalize disadvantaged groups as opposed to individuals who have acted wrongfully.
41. There should be further focus on studying the particular needs of minorities and other disadvantaged groups in societies, such as women, children, and non-citizens. It should also be recognized that there are difficulties in access to justice because of denial of economic, social and cultural rights to disadvantaged groups.

Measures to Enhance Democracy and the Rule of Law

A number of measures have been identified to strengthen and enhance democracy and the rule of law, particularly with regard to judicial authorities as well as parliaments. The special needs of countries in transition were also recognized along with the indispensable role of the United Nations in this regard. In this context:

Strengthening Judicial Infrastructure

42. The independence of the judiciary is a core component of democratic governance and mandated by international norms. States should respect the United Nations Basic Principles on the Independence of the Judiciary. Nevertheless, concern was expressed regarding the modalities for ensuring the accountability of judges. While recognizing the importance of the principle of separation of powers and non-interference with the judicial function, particularly with respect to political pressures or influence exercised by the other branches of Government, judges need to be accountable.
43. Judicial integrity is a key element of impartial justice. States that do not already have a code of conduct for judges are encouraged to consider adopting the Bangalore Principles on Judicial Conduct. In this context, judicial discipline and the removal of judges who have engaged in corruption are essential.

44. The judiciary should be representative of [and sensitive, and responsive to the most disadvantaged groups in society. States should consider training judges to become sensitive to special issues pertaining to women and other disadvantaged groups.
45. States should give serious consideration to compulsory, periodic and continuous legal education, including in the area of international human rights law and jurisprudence. Judges should receive more training on international human rights standards and jurisprudence, and the modalities for the domestic application of international human rights law.
46. OHCHR should be invited to further develop its technical assistance programmes in the area of judicial training. Issues relating to how international human rights law could be applied by national courts, even in cases where the State has not ratified international treaties or not enacted implementing legislation, should be addressed in the context of technical assistance on the domestic application of international standards.
47. Efforts should be made to explore how a database of the opinions of high-level national courts that have applied international human rights law and jurisprudence in the domestic context could be developed.

Providing meaningful assistance to parliaments

48. Democracy is the only system of governance that is self-correcting and that offers hope for the realization of human rights and fundamental freedoms. The oversight role of parliaments as guardians of human rights should be supported and enhanced. Parliament plays a fundamental role in reforming national legislation in line with international standards. Effective parliaments that represent the will of the people are essential to democratic rule.
49. Support for initiatives to assist parliaments in the area of capacity-building are welcome and should be increased in order to help parliaments to be more accessible to their constituents, in particular civil society and disadvantaged groups.
50. Efforts should be made to protect and promote the rights of members of parliaments to enable them to effectively play their role as guardians of human rights. Efforts by the Inter-Parliamentary Union (IPU) in this regard through the Committee on the Human Rights of Parliamentarians should be supported and encouraged.
51. The IPU plays a crucial role in the effective functioning of parliaments. The IPU and the United Nations should deepen their cooperation in seeking common approaches to enhance democratic practices. The development of the Manual on Good Practices by Parliamentarians by the Inter-Parliamentary Union is welcome, and the Manual should be widely disseminated once completed.

52. Parliaments should welcome media coverage and criticism of their proceedings, with a view to ensuring transparent and accountable processes for the adoption of legislation and government oversight, and also to facilitate a better understanding of their activities among the public. The existence of free and independent media is a prerequisite in this regard.

Assisting post-conflict States

53. Societies emerging from conflict have special needs in addressing the legacy of human rights violations and moving towards democratic governance under the rule of law. The international community, particularly democracies, should assist post-conflict States in making the transition to stable democracy by, *inter alia*, providing technical assistance and international cooperation in multilateral forums.

54. Truth and reconciliation mechanisms constitute an important step in establishing accountability and achieving justice. They should be established through a participatory process whose legitimacy should be confirmed by the victims. It is imperative that the truth and reconciliation mechanisms be fully equipped to carry out their tasks in a transparent and efficient manner. Their status should provide for follow-up as appropriate, including in the form of prosecutions. The demand for justice by victims should be recognized as an obligation within a democratic transition. Every effort should be made to find viable means and methods of achieving that end.

55. Reparation programmes should be a tool for fully integrating victims in society and restoring respect for their dignity. They should not be limited to financial compensation only, but should be designed in a comprehensive manner in accordance with international standards. The experts suggested that the special procedures of the Commission on Human Rights should document cases of violence against women, in particular to ensure reparations for women who suffered harm in cases of sexual violence. Assistance by the international community might be required in providing adequate reparation, including the possible creation of international reparation mechanisms.

56. A number of United Nations departments, agencies and programmes are actively assisting Member States to build more inclusive and participatory democratic political processes under the rule of law. Their role must be enhanced. The framework for United Nations action, as articulated by the Secretary-General in his important report to the Security Council on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616 of 3 August 2004), is welcome.

The findings of this seminar should be seen as a guide to the realization of the holistic concept of democracy.